UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

STAY THE COURSE WEST VIRGINIA,
a West Virginia unaffiliated independent
expenditure political action committee;
DAVID BAILEY, in his capacity as Chairman and
Treasurer of Stay the Course West Virginia;
PINEVILLE LUMBER, INC., a West Virginia
Corporation; and **THOMAS STEPHEN BAILEY**,

Plaintiffs,

v. **Case No. 1:12-cv-1658**

NATALIE E. TENNANT, in her official capacity
as West Virginia Secretary of State and member
of the West Virginia State Election Commission;
and **SCOTT ASH**, in his official capacity as
Prosecuting Attorney for Mercer County, West
Virginia, as a representative of the class of all
West Virginia Prosecuting Attorneys,

Defendants.

DEFENDANT'S MEMORANDUM ON THE SCOPE
OF INJUNCTIVE RELIEF AGAINST STATE ACTORS

The Eleventh Amendment of the United States Constitution bars actions against state governments brought by the citizens of another state or the citizens of a foreign country. The United States Supreme Court has also interpreted the Eleventh Amendment to bar federal courts from hearing lawsuits instituted by citizens of the state being sued. There are few exceptions to this bar, one of which is known as the *Ex parte Young*[1] doctrine. This exception allows claims for injunctive relief

[1] This arises from the decision in the case of Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

where the relief sought is not against the state in itself, but lawful control of the conduct of a state officer. Under this doctrine, the citizens of a state may bring an action for injunction in federal court against a state officer to "end a continuing violation of federal law."

This doctrine "rests on the premise—less delicately called a 'fiction,' —that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes." Virginia Office for Protection and Advocacy v. Stewart, 131 S.Ct. 1632, 1638 (2011). When the state itself is the real party in interest, this exception for injunctive relief does not apply and the immunity bestowed by the Eleventh Amendment will bar the action against the state and its agencies.

Thus, injunctions brought under the *Ex parte Young* doctrine are a form of *in personam* action and are specific to the state officer who is to be enjoined. In order to determine whether the doctrine applies in a particular case, the general criterion is the effect of the relief sought. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 107, 104 S.Ct. 900, 911 (1984).

Because the *Ex parte Young* exception to Eleventh Amendment immunity is tied to the action of a named officer of a state, an order for injunction must necessarily limit the conduct of only that officer. Where the injunction seeks to limit the action of the state itself, such an order would violate the Eleventh Amendment.

CONCLUSION

Where a party seeks to prevent an alleged violation of federal law by a state officer, the party may seek injunctive relief in a federal court, but the action is limited solely to relief against the officer and not against the state or its agencies.

Respectfully submitted,
NATALIE E. TENNANT,
In her official capacity as
SECRETARY OF STATE OF
THE STATE OF WEST VIRGINIA,
and member of the WEST VIRGINIA
STATE ELECTION COMMISSION,

By counsel

DARREL V. McGRAW, Jr.,
ATTORNEY GENERAL

/s/ Doren Burrell

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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that I have, on this 5th day of August, 2012, electronically filed the foregoing "Defendant's Memorandum on the Scope of Injunctive Relief Against State Actors" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel:

Allen R. Prunty
W. Bradley Sorrels
Counsel for the Plaintiffs

/s/ Doren Burrell